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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,254	05/21/2004	John A. Crockett		2253
7590	03/17/2008		EXAMINER	
John A. Crockett 24 Sol Drive Carmel, NY 10512-5039			BOWERS, NATHAN ANDREW	
			ART UNIT	PAPER NUMBER
			1797	
			MAIL DATE	
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			DELIVERY MODE	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/708,254	CROCKETT, JOHN A.
	<b>Examiner</b>	<b>Art Unit</b>
	NATHAN A. BOWERS	1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 January 2008.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over McNelly (US 6524848) in view of Ouellette (US 20030024686).

McNelly discloses a method for capturing surplus microbial heat from compost comprising the use of a forced aeration system. McNelly states that fresh air is moved through a valve (Figure 1:2) and through a compost chamber (Figure 1:Co) in order to provide oxygen to microbes in the compost. The heated air is then routed through the primary side of a heat exchanger. McNelly teaches in column 4, line 44 to column 5, line 6 that moisture in the air will condense, and that the moisture is collected from the heat exchanger. Column 7, lines 47-67 states that blowers are provided for forcing gas through the composter and the heat exchanger. Values (Figure 1:1 and Figure 1:2) are additionally provided for adjusting the rate of air flow

through the composter. McNelly, however, does indicate that the system comprises a vessel or plurality of vessels to hold organic material during composting.

Ouellette discloses a method for capturing surplus microbial metabolic heat from compost. Ouellette states in paragraphs [0079], [0080] and [0094] that compost piles (Figure 2:124, 126) are provided heat pipes (Figure 2:116, 118) located within concrete floors (Figure 2:120, 122) upon which the compost piles are stacked. Heat energy is removed from the compost material using the heat pipes, and is transferred to a water storage tank. Paragraphs [0134]-[0138], [0148]-[0151] and [0228] describe an additional embodiment in which the compost is not confined within concrete channels, but rather resides upon concrete slabs that do not require sidewalls and/or covers. Heat is extracted from this simplified "open-air" composting arrangement in much the same way as previously described embodiments. Paragraph [0228] indicates that "it does not matter if the compost pile is outside on a planar surface, such as a cement or concrete pad." Ouellette teaches that heat can be extracted from compost when it is retained within a container or when it is simply piled outside in an "open-air" system.

McNelly and Ouellette are analogous art because they are from the same field of endeavor regarding heat extraction systems.

At the time of the invention, it would have been obvious to operate the heat exchange system disclosed by McNelly using a compost pile not restrained within a container, vessel or enclosure. Ouellette teaches in paragraph [0228] that temperatures within a compost pile will remain high regardless of whether it enclosed within a temperature controlled container or simply arranged as a pile upon a concrete slab exposed to the outside environment. It would

have been beneficial to perform composting outside of the containers disclosed by McNelly in order to avoid high costs associated with the maintenance of compost within an enclosure.

***Response to Arguments***

Applicant's arguments filed 04 January 2008 with respect to the 35 U.S.C. 102 rejections involving Shindo have been fully considered and are persuasive. These rejections have been withdrawn.

Applicant's arguments filed 04 January 2008 with respect to the 35 U.S.C. 102 rejections involving McNeely have been fully considered and are persuasive. Therefore, these rejections have been withdrawn. However, upon further consideration, a new ground of rejection is made in view of the combination of McNelly with Ouellette.

The Ouellette reference addresses the deficiencies of the McNelly reference by indicating that it is known in the art to capture heat from a compost pile not contained within an enclosure, but instead situated simply upon a concrete slab exposed to the environment.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan A. Bowers whose telephone number is (571) 272-8613. The examiner can normally be reached on Monday-Friday 8 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/William H. Beisner/  
Primary Examiner, Art Unit 1797

/Nathan A Bowers/  
Examiner, Art Unit 1797